

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 829

6
7 H.P. 557

House of Representatives, February 28, 1985

8 On Motion of Representative Brannigan of Portland, referred to the
9 Committee on Business and Commerce. Sent up for concurrence and ordered
10 printed.

EDWIN H. PERT, Clerk

11 Presented by Speaker Martin of Eagle Lake.

Cosponsored by President Pray of Penobscot.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-FIVE
16

17 AN ACT Permitting Retention of Loss in
18 Excess of Loss Fund by Group Self-insurers.
19

20 Be it enacted by the People of the State of Maine as
21 follows:

22 39 MRSA §23, sub-§4, as amended by PL 1983, c.
23 303, is further amended to read:

24 4. Group self-insurance.

25 B. Any group of employers may adopt a plan for
26 self-insurance, as a group, for the payment of
27 compensation under this chapter to their employ-
28 ees. Under such plan the group shall assume the
29 liability of all the employers within the group
30 and pay all compensation for which the said em-
31 ployers are liable under this chapter. Where such
32 plan is adopted the group shall furnish satisfac-
33 tory proof to the superintendent of its financial
34 ability to pay such compensation for the employ-
35 ers in the group, its revenues, their source and

1 assurance of continuance. The superintendent
2 shall require the deposit with the Workers' Com-
3 pensation Commission of such securities as may be
4 deemed necessary of the kind prescribed in para-
5 graphs A to E or the filing of a bond of a surety
6 company authorized to transact business in this
7 State, in an amount to be determined to secure
8 its liability to pay the compensation of each em-
9 ployer as above provided in accordance with para-
10 graph E. Such surety bond must be approved as to
11 form by the superintendent. The superintendent
12 may also require that any and all agreements,
13 contracts and other pertinent documents relating
14 to the organization of the employers in the group
15 shall be filed with him at the time the applica-
16 tion for group self-insurance is made. Such ap-
17 plication shall be on a form prescribed by the
18 superintendent. The superintendent shall have the
19 authority to deny the application of the group to
20 pay such compensation or to revoke his consent
21 furnished under this section at any time for good
22 cause shown. The group qualifying under this par-
23 agraph shall be known as a self-insurer.

24 C. An employer participating in group self-
25 insurance shall not be relieved from the liabili-
26 ty for compensation prescribed by this chapter,
27 except by the payment thereof by the group self-
28 insurer or by himself. As between the employee
29 and the group self-insurer, notice to or knowl-
30 edge of the occurrence of the injury on the part
31 of the employer shall be deemed notice or knowl-
32 edge, as the case may be, on the part of the
33 group self-insurer; jurisdiction of the employer
34 shall, for the purpose of this chapter, be juris-
35 diction of the group self-insurer and the group
36 self-insurer shall in all things be bound by and
37 subject to the orders, findings, decisions or
38 awards rendered against the participating employ-
39 er for the payment of compensation under this
40 chapter. The insolvency or bankruptcy of a par-
41 ticipating employer shall not relieve the group
42 self-insurer from the payment of compensation for
43 injuries or death sustained by an employee during
44 the time the employer was a participant in the
45 group self-insurance. The group self-insurer
46 shall promptly notify the superintendent and the

1 Workers' Compensation Commission, on a prescribed
2 form, of the addition of any participating em-
3 ployer or employers. The approval of the Superin-
4 tendent of Insurance shall not be necessary in
5 order to add participating employers to the group
6 self-insurer. Notice of termination of a partic-
7 ipating employer shall not be effective until at
8 least 10 days after notice of that termination,
9 on a prescribed form, has been either filed in
10 the office of the superintendent and the Workers'
11 Compensation Commission or sent by registered
12 mail. The group self-insurer shall give notice
13 of the termination of any participating member to
14 all other participating members at least quarter-
15 ly each year. Written notice shall be given to
16 any new participating member at the time of ad-
17 mission that the specific membership of the group
18 and its members as prescribed in this section
19 shall not be affected by the group's failure to
20 provide its members with prior or immediate no-
21 tice of changes in the membership of the group if
22 notice is given at least quarterly, provided that
23 the termination or admission of members was ef-
24 fected in compliance with all group agreements
25 and bylaws and in compliance with this section
26 and the rules adopted thereunder.

27 D. Each group self-insurer, in its application
28 for self-insurance, shall set forth the names and
29 addresses of each of its officers, directors,
30 trustees and general manager. Notice of any
31 change in the officers, directors, trustees or
32 general manager shall be given to the superin-
33 tendent and the Workers' Compensation Commission
34 within 10 days thereof. No officer, director,
35 trustee or employee of the group self-insurer may
36 represent or participate directly or indirectly
37 on behalf of an injured worker or his dependents
38 in any workers' compensation proceeding. All em-
39 ployees of employers participating in group self-
40 insurance shall be and are deemed to be included
41 under the group self-insurance plan.

42 E. If for any reason, the status of a group
43 self-insurer under this paragraph is terminated,
44 the securities or the surety bond on deposit re-
45 ferred to herein shall remain in the custody of

1 the Workers' Compensation Commission for a period
2 of at least 26 months. At the expiration of such
3 time or such further period as the superintendent
4 may deem proper and warranted, he may accept in
5 lieu thereof, and for the additional purpose of
6 securing such further and future contingent lia-
7 bility as may arise from prior injuries to work-
8 ers and be incurred by reason of any change in
9 the condition of such workers warranting the
10 board making subsequent awards for payment of ad-
11 ditional compensation, a policy of insurance fur-
12 nished by the group self-insurer, its successor
13 or assigns or other carrying on or liquidating
14 such self-insurance group. Such policy shall be
15 in a form approved by the Superintendent of In-
16 surance and issued by the state fund or any in-
17 surance company licensed to issue this class of
18 insurance in this State. It shall only be issued
19 for a single complete premium payment in advance
20 by the group self-insurer. It shall be given in
21 an amount to be determined by the superintendent
22 and when issued shall be noncancellable for any
23 cause during the continuance of the liability se-
24 cured and so covered.

25 F. The Superintendent of Insurance may provide
26 for the administration of this section relating
27 to self-insurance in the manner prescribed in Ti-
28 tle 24-A, section 212.

29 G. If an employer is a partnership, or a sole
30 proprietorship, and is a member of a self-
31 insurance group associated pursuant to this sec-
32 tion, such employer may elect to include as an
33 "employee" any member of such partnership, or
34 owner of such sole proprietorship, for purposes
35 of obtaining workers' compensation coverage under
36 this Act. In the event of such election, the
37 electing employer shall serve upon the group
38 self-insurance association written notice naming
39 the partner or sole proprietor to be covered, and
40 no election shall be deemed to have been made
41 within this Act until such notice has been given.
42 By making such an election, the partnership mem-
43 ber or sole proprietor shall be deemed to have
44 stipulated that for premium payment purposes the
45 weekly salary or wage of such electing partner-

1 ship member or sole proprietor is \$200 per week.

2 H. Fee schedules applicable to group
3 self-insurers are those set forth in Title 24-A,
4 section 601.

5 J. Each group self-insurer shall record its loss
6 expense and experience in accordance with Title
7 24-A, section 2323.

8 K. Special study of the Superintendent of Insur-
9 ance.

10 (1) The Superintendent of Insurance is di-
11 rected to conduct a study to determine the
12 effect of group self-insurers authorized
13 pursuant to this chapter upon the workers'
14 compensation insurance plan. The superin-
15 tendent is directed to form a special com-
16 mittee to assist in this study.

17 (2) The special committee shall consist of
18 2 members representing each of the following
19 groups who shall be appointed by the super-
20 intendent:

21 (a) Workers' compensation insurers;
22 (b) Group self-insurers;
23 (c) Labor; and
24 (d) The public.

25 (3) The study may not commence until 2
26 years following initial authorization of a
27 group self-insurer pursuant to this chapter.

28 (4) Each insurer and group self-insurer
29 providing workers' compensation coverage
30 during the calendar year in which the study
31 commences shall be assessed a fee not to ex-
32 ceed \$100. These assessments shall be used
33 for the purpose of conducting the study.

34 (5) Following completion of the study, the
35 superintendent shall report to the Governor

1 and the Legislature. The report shall con-
2 tain his findings as to the impact of group
3 self-insurance on the workers' compensation
4 insurance plan and his recommendations for
5 additional legislation.

6 L. Annual examinations of each group self-
7 insurer, as required by the superintendent, shall
8 be performed by public accountants acceptable to
9 the superintendent and reports rendered to the
10 superintendent within a reasonable period, as de-
11 termined by the superintendent subsequent to the
12 group self-insurers elected fiscal year. The ex-
13 aminations shall be conducted pursuant to gener-
14 ally accepted accounting principles, as they are
15 consistent with precepts prescribed by the super-
16 intendent, which place sound values on assets and
17 liabilities of group self-insurers. Other exami-
18 nations of the affairs, transactions, accounts,
19 records and assets of each group self-insurer and
20 of any person as to any matter relevant to the
21 financial affairs of the group self-insurer shall
22 be conducted as often as the superintendent deems
23 advisable. The expense of examination of a group
24 self-insurer shall be borne by the person exam-
25 ined.

26 In any fiscal year, no group self-insurer may be re-
27 quired to obtain aggregate primary excess insurance
28 with limits in an amount greater than its current
29 year premium excess of its loss fund. The superin-
30 tendent may set lower limits for an aggregate primary
31 excess insurance where in his judgment the lower
32 limits be prudent.

33 Notwithstanding other provisions of this section, a
34 group self-insurer may dedicate a portion or all of
35 its unimpaired surplus to reduce the aggregate excess
36 insurance requirement by an amount equal to the
37 amount of surplus so dedicated. The proceeds of sub-
38 ordinated loan certificates issued by a group self-
39 insurer and held by members of any group self-
40 insurer, if the proceeds are otherwise unimpaired,
41 shall be made part of the surplus account.

1

STATEMENT OF FACT

2 The purpose of this bill is to set a limit on the
3 aggregate primary excess insurance that may be re-
4 quired of group self-insurers. Additionally, the
5 bill authorizes the use of the proceeds of the sale
6 of subordinated loan certificates in reducing the ag-
7 gregate primary excess insurance requirement set
8 forth in this bill. As a practical matter, these
9 practices are being or have been followed in the
10 past.

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